

NOTICE OF PROPOSED RULEMAKING

TITLE 15. Crime Prevention and Corrections DIVISION 2. Board of Parole Hearings (Formerly known as Board of Prison Terms) CHAPTER 5. Parole Supervision ARTICLE 1. Length and Conditions of Parole

Amendment of Sections 2510, 2511, 2512 and 2513

NOTICE IS HEREBY GIVEN that the Board of Parole Hearings (board) proposes to amend California Code of Regulations (CCR), title 15, sections 2510, 2511, 2512 and 2513. These four regulations establish the language for the general conditions of parole as well as criteria for the construction of special conditions of parole. These regulations implement portions of the *Armstrong v. Schwarzenegger* (2002) USDC-ND (No. C-94-2307-CW) (*Armstrong*) and *Valdivia v. Schwarzenegger* (2003) USDC- ED (No. C-94-0671-LK) (*Valdivia*) court orders that require review of the parole process and reform to make the regulations easily understandable to the directly affected public—prisoners and parolees who might have a disability, including a learning disability.

AUTHORITY AND REFERENCE

Government Code section 12838.4 and Penal Code sections 3052 and 5076.2 authorize the board to adopt the proposed regulations. The proposed regulations implement, interpret and make specific *Morrissey v. Brewer*, 408 U.S. 471 (1972), Health and Safety Code section 11590, Penal Code sections 186.22, 290, 457.1, 3000, 3052, 3053, 3053.2, 3053.5, 3056, 3057, 3060, 3060.5, 3068, 12020, and *Armstrong* and *Valdivia*

PUBLIC HEARING

The board has not scheduled a public hearing on this proposed regulatory action. However, the board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

The purpose of a public hearing is to receive oral comments about the proposed regulation. It is not a forum to debate the proposed regulation. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period have the same significance and influence as oral comments presented at a public hearing. The board members will not be present at the public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulation to the board. **THE WRITTEN COMMENT PERIOD ON THIS PROPOSED REGULATORY ACTION WILL COMMENCE ON MAY 30, 2008 AND WILL CLOSE AT 5:00 P.M. ON JULY 14, 2008.** In order for the comments to be considered by the board, they must be submitted in writing (by mail, fax or e-mail) to the board's Contact Person identified in this Notice no later than the close of the comment period.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The federal courts in *Armstrong v. Schwarzenegger* (*Armstrong II*), United States District Court, Northern District of California, Case No. C94-2307 CW (*Armstrong*), and *Valdivia v. Schwarzenegger*; United States District Court, Eastern District of California, Case No. CIV S94-0671 LKK GGH (*Valdivia*) issued orders that the board develop and implement policies and procedures that accommodate and effectively communicate with prisoners and parolees (including prisoners and parolees with disabilities) at all parole proceedings, including parole revocation proceedings. Notice of the conditions of parole is the first step in the parole process that might lead to parole revocation proceedings.

Regulation section 2510 as amended establishes a general requirement that the prisoner shall be informed of the length and conditions of his/her parole. Section 2510 also provides several definitions that are key to understanding this regulation.

Regulation Section 2511 as amended explains the purpose of the notice of parole and the conditions of parole. While the notice of parole provides a description of the rules and regulations governing parolees, the conditions of parole are the actual rules that govern the parolee. The conditions governing parolees are expressed clearly and effectively so that an optimum number of parolees can reasonably be expected to understand them. Additionally regulation 2511, implements equal access in the form of reasonable accommodation for inmates/parolees with disabilities (e.g. help communicating the conditions of parole for hearing or sight impaired inmates/parolees).

Regulation section 2512 as amended lays out the exact language of the general conditions of parole that are to apply to all parolees. The general conditions include a prohibition on all criminal conduct, reporting requirements to the parole agent including compulsory adherence to the parole agent's instructions, submission to extensive search rights by the parole agent or peace officer, travel restrictions, requirement that the parolee inform the parole agent of residence and employment situation and restrictions on weapons possession.

Regulation section 2513 as amended lays out the exact language of some of the special conditions that may be put into effect as part of a parolee's conditions of parole. If any special conditions are imposed on a prison term it will be in addition to the mandatory set of general conditions delineated in section 2512. Special conditions can include restrictions on association with gangs, requirements to attend a mental health program, prohibition on contact with the victim or victim's family, where warranted by the crime prohibition on contact with a person

under 18, restrictions on living location or circulation of the parolee e.g prohibition on being near schools or parks where children congregate. Other restrictions through the imposition of special conditions include, curfews and prohibition on the use of alcohol and/or drugs.

On November 7, 2006, voters passed Proposition 83 (Jessica's Law). This new law places additional restrictions on parolees convicted of certain sex offenses. These restrictions with respect to certain sex offenders (e.g. restriction on living near schools or parks) are included in the array of special conditions featured in 2513.

DISCLOSURES REGARDING THE PROPOSED ACTION

Local Mandates: The board has determined that the proposed action imposes no mandate upon local agencies or school districts.

Fiscal Impact Statement: The board has made the following initial determinations:

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: **None**
- Cost or savings to any state agency: **None**
- Other non-discretionary cost or savings imposed on local agencies: **None**
- Cost or savings in federal funding to the state: **None**

Significant Statewide Adverse Economic Impact on Business: The board has determined that there is no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effects on Job and/or Business Creation, Elimination or Expansion: The board has determined that adoption of this regulation will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing business within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on Housing Costs: The board has made an initial determination that the proposed action will have no significant effect on housing costs.

Small Business Determination: The board has determined that the proposed regulation does not have a significant adverse economic impact on small business because small businesses are not affected by the internal management of State prisons.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for

which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested parties are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes during the public comment period.

CONTACT PERSON

Please direct requests for copies of the Initial Statement of Reasons, the proposed amended text of the regulation, or other information upon which the rulemaking is based to:

Anthony Vessigault, Regulations Coordinator
Board of Parole Hearings
PO Box 4036
Sacramento, CA 95812-4036
Telephone: (916) 323-0944
Facsimile: (916) 324-3859
E-mail: Anthony.Vessigault@cdcr.ca.gov

In any such inquiries, please identify the action by using the board's regulation control number RN 08-02 .

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: Devaney Sullivan at (916) (916) 322-6815 or Devaney.Sullivan@cdcr.ca.gov.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The board will make the rulemaking file available to the public throughout the rulemaking process at its offices located at 1515 K Street, Suite 600, Sacramento, California. As of the date this Notice is published in the Office of Administrative Law's Notice Register, the rulemaking file consists of this Notice, Form 400 (Notice of Submission of Regulations), the proposed text of the regulation, Initial Statement of Reasons and Form 399 (Fiscal Impact Statement). Copies of these documents may be obtained by contacting the board's Contact Person at the address or phone number listed above or by visiting the board's Web site at:

http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the board may adopt the proposed regulations substantially as described in this Notice. If the board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the board adopts the regulations as revised. Please send requests for copies of any modified regulation text to the attention of the Contact Person identified in this Notice or by visiting the board's Web site at http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html. The board will accept

written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained from the board's Regulation Coordinator or by visiting the board's Web site at:

http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html

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